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BUILDING CODE COMMISSION

Annual Report

2010 – 2011

Ministry of Municipal Affairs and Housing

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Ontario

TO THE LIEUTENANT GOVERNOR
OF THE PROVINCE OF ONTARIO

MAY IT PLEASE YOUR HONOUR:

For the information of Your Honour and the Legislative Assembly, I am presenting the Annual Report of the Building Code Commission for the fiscal year 2010/11.

Respectfully submitted,

Rick Bartolucci, MPP, Sudbury
Minister

Building Code Commission

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Ontario

June 15, 2011

The Honourable Rick Bartolucci
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, Ontario
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Dear Minister Bartolucci:

Re: Building Code Commission
Annual Report – Fiscal year 2010 - 2011

It is my pleasure, as Chair of the Building Code Commission, to present to you the Building Code Commission's Annual Report for the fiscal year ending March 31, 2011.

The enclosed Annual Report highlights the Building Code Commission's accomplishments over the 2010 - 2011 fiscal period and outlines challenges that have been identified for the future. Overall, the Building Code Commission had a productive year, having received 39 new applications and conducted 34 hearings.

I would like to thank my fellow Commission members whose knowledge and dedication have earned the Building Code Commission an excellent reputation as a valuable service provider in the building and construction industry. On behalf of all members of the Commission, I would also like to express our thanks to the staff of the Ministry of Municipal Affairs and Housing for their exemplary expert support to the Building Code Commission. Without their excellent administrative, technical and legal assistance the Building Code Commission simply could not function.

Sincerely,

Tony Chow, Chair
Building Code Commission

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BUILDING CODE COMMISSION
2010 – 2011 Annual Report

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2010 - 2011 ANNUAL REPORT
Building Code Commission

A. MANDATE

The Building Code Commission is an adjudicative agency whose legislative authority is set out in sections 23 and 24 of the *Building Code Act, 1992.*

The Building Code Commission has a mandate to resolve disputes between proponents of construction projects and local enforcement officials. The *Building Code Act* sets out three types of disputes that can be heard by the Building Code Commission: those relating to the sufficiency of compliance with the technical requirements of the Building Code; those related to compliance with the prescribed time frames for permit processing; and, those related to compliance with the prescribed time frames for site inspections.

Commitment to Service and Guiding Principles

The inaugural meeting of the Building Code Commission was held on February 9th, 1976, shortly after the *Building Code Act* came into effect. Since then – more than a quarter century and over 1,200 hearings later – the Building Code Commission has endeavoured to provide a timely, low-cost and non-adversarial process for resolving Building Code disputes through a streamlined and accessible appeals system. In doing so, the Building Code Commission has earned a reputation within the construction industry of being an effective, useful and high quality adjudicative body.

The Building Code Commission has entered into a Memorandum of Understanding with the Minister of Municipal Affairs and Housing in respect of the administration of the Commission. The Memorandum of Understanding sets out the relationship between the Chair of the Commission, the Minister and the Ministry of Municipal Affairs and Housing with respect to the Building Code Commission and the service it provides. The purpose of the Memorandum of Understanding is to establish the responsibilities of these parties and to ensure that accountability is a fundamental principle that is observed in the management, administration and operations of the Commission.

As an agency of government, the Building Code Commission conducts itself according to the management principles of the Government of Ontario. The Commission's proceedings are governed by the *Statutory Powers Procedure Act*, the *Building Code Act, 1992,* the Building Code Commission's Guidelines, Policies and Procedures Handbook, Treasury Board/Management Board of Cabinet Directives and the *Public Service of Ontario Act, 2006.* These principles and governance elements include ethical behaviour, accountability, excellence in management, wise use of public funds, and high-quality service to the public by contributing to the health, safety, accessibility and energy efficiency of buildings in Ontario and by playing a positive role within Ontario's design and construction sector.

B. ABOUT THE BUILDING CODE COMMISSION

Building Code Commission Process and Procedures

The process leading to a Building Code Commission hearing begins with the receipt of an Application. Section 24 of the *Building Code Act, 1992,* provides that the Commission may determine disputes must be between a chief building official, inspector or Registered Code Agency and an applicant for a permit, a holder of a permit, or a person to whom an order is given. Parties to the Building Code Commission are typically builders, developers, architects, engineers, etc. as Applicants and municipal plan reviewers, building inspectors, registered code agencies and health officials as Respondents.

Once an Application is submitted, the Commission requests confirmation of the dispute from the Respondent by sending them a Confirmation of Dispute form for completion and return. The Confirmation of Dispute is similar to the application form. Its purpose is twofold: 1) to verify that there is a dispute involving the technical requirements of the Building Code; and 2) to allow the Respondent to explain their position on the issue.

For disputes related to sufficiency of compliance with the technical requirements of the Building Code: once the Confirmation of Dispute is received, the Commission under their authority in subsection 24(6) of the *Building Code Act,* requests a technical report from the Building and Development Branch of the Ministry of Municipal Affairs and Housing. This report, known officially as the Technical Background Information memo, analyzes the issue at hand with regard to the provisions of the Building Code identified as being relevant to the disputed matter. The Technical Background Information memo examines the history, technical considerations, and proposed amendments (if any) regarding the pertinent Building Code provision(s).

For disputes related to the legislated time frames: a Technical Background Information Memo is not requested as no technical matters are involved in the dispute.

Hearing Procedures

Once all of the required information is received and has been provided to all parties to the hearing, a hearing is scheduled.

Building Code Commission hearings, while generally informal, are conducted in accordance with procedural rules established under the *Building Code Act, 1992* and the *Statutory Powers Procedure Act.*

The Commission Chair, Vice-Chair, or Chair-Designate for the day conducts the hearing. Hearings begin with introductions and preliminary matters, such as identification of exhibits. Parties can represent themselves, but often choose a designated agent such as a contractor, architect, a building and fire code consultant or a lawyer.

Once the hearing has concluded, the members of the panel deliberate on the evidence and render their ruling. This decision is then provided to the parties to the hearing and is eventually posted on the website at http://www.mah.gov.on.ca/Page7394.aspx.

Members and Staff

As of March 2011, the Commission has a total of 17 part-time members, including the Chair and three Vice-Chairs. All members are appointed by Order in Council for initial two or three year terms, individuals appointed to the Building Code Commission may serve a combined term of appointment of up to 10 years. Commission members preside over hearings and render decisions on disputes. The Chair and Vice-Chairs are also responsible for making administrative decisions regarding operations and relations with the Ministry.

Pursuant to a Memorandum of Understanding with the Ministry of Municipal Affairs and Housing, the Building Code Commission is provided with administrative, technical and secretarial support through the Ministry of Municipal Affairs and Housing's Building and Development Branch. The Commission's direct support staff consists of a 0.4 Full Time Equivalent Coordinator, Building Innovation, 1.0 Full Time Equivalent Building Code Commission Secretary and a 0.4 Full Time Equivalent administrative assistant. Commission staff are responsible for providing administrative and secretarial support to the Commission. Legal advice is provided through the Ministry's Legal Services Branch.

2010 - 2011 Caseload

The Building Code Commission can hold between six and ten hearings in a month, however, the number of applications received dictates the number of hearings the Commission needs to schedule. For the current reporting cycle, the Building Code Commission received 39 new applications and held 34 hearings.

The Commission has received the following number of applications over the last five years:

Fiscal Year	Building Applications	Septic Applications	Permit Time Period Applications	Inspection Time Period Applications	Total Applications
2006-2007	42	18	4	0	64
2007-2008	47	11	3	0	61
2008-2009	25	7	2	0	34
2009-2010	41	10	2	1	54
2010-2011	34	5	0	0	39

Fiscal Year	Total Hearings
2006-2007	59
2007-2008	47
2008-2009	34
2009-2010	32
2010-2011	34

Note: Differences in application vs. hearing totals may be attributed in part to matters being resolved between the parties before a hearing is held.

With the introduction of the 2006 Building Code, the Building Code Commission anticipated an increase in the number of applications; nowever, the application rate for the previous fiscal year was slightly lower than in the preceding fiscal cycles.

In the current reporting cycle, the number of applications has returned to expected levels. It should, however, be noted that while the number of applications to the Building Code Commission may have decreased slightly since five years ago, the complexity of the applications has increased. In addition, the Commission has also seen an increase in the number of applications requiring it to examine and determine its jurisdiction and mandate relative to disputes that may extend beyond the technical requirements of the Building Code.

C. ANALYSIS OF BUILDING CODE COMMISSION PERFORMANCE

Performance Measures and Targets

The Building Code Commission has adopted the recommendations for performance measurement established by the Agency Reform (Guzzo) Commission. These are: fairness, accessibility, timeliness, quality and consistency, transparency, expertise, optimum cost, and courtesy. While not all of the goals were rated as "high" by the Commission, there are processes in place to ensure that all goals are integrated into the Commission's operation and are, therefore, adequately addressed. The chart below indicates the goals which the Commission rated as "high".

Goals	Ranking
Fairness	**High**
Accessibility	Low
Timeliness	**High**
Quality and Consistency	Medium
Transparency	**High**
Expertise	**High**
Optimum Cost	Low
Courtesy	**High**

Several steps have been taken to enhance the Building Code Commission's performance and accountability over the past several years, including incorporating performance measurement in the ministry's business planning process and introducing Commission-specific performance measures (Guzzo Report recommendations). Overall, the Building Code Commission has surpassed its targets for high rated goals. Performance measures based on these goals are found in Appendix 1.

Fairness

- The stated target of no more than two complaints or judicial reviews was again met in the 2010 - 2011 fiscal year. Survey results for the 2010 – 2011 fiscal year indicate that 95% of clients surveyed agreed that they were treated fairly.

Timeliness

- Based on figures from the 2010 - 2011 fiscal year, the current average wait time from receipt of an application to a hearing at the Building Code Commission is 43 working days, 3 days over the stated target of 40 days. During the 2010 – 2011 fiscal year, an average of 23 working days to hearing from the receipt of the Respondent's confirmation of dispute was achieved; this was 3 days over the stated target of 20.

- The above figures do not include the wait time associated with service level appeals, for which the hearing must be held by the Commission not more than 5 business days after receipt of an application for hearing. In this regard, the Building Code Commission met the stated target 100% of the time.

Transparency

- Survey results of the parties that utilized Building Code Commission services in the 2010 – 2011 fiscal year indicated that 100% of Respondents felt that the processes and procedures were clear and understandable.

Expertise

- Survey results of the parties that utilized the Building Code Commission services in the 2010 - 2011 fiscal year indicated that 93% of Respondents felt that members demonstrated an appropriate level of expertise regarding the technical matters under consideration.

Courtesy

- Survey results of the parties that utilized the Building Code Commission services in the 2010 – 2011 fiscal year indicated that 100% felt that they were treated with courtesy by Commission staff throughout the application process and 100% felt that they were treated with courtesy by the Commission members.

The complete list of performance measures and survey results for the Building Code Commission can be found in Appendix 1.

Operational Performance

The Building Code Commission believes that in order to provide quality service to the public and the design and construction sector in particular, the Building Code Commission, as an agency, must operate as effectively and efficiently as possible. This means more than having performance measurements in place to strive for service excellence on a day-to-day basis. It also means pursuing excellence from an operational and administrative standpoint over the long term. In order to achieve this, the Building Code Commission also assesses itself on its operational performance. As with the above performance measures, operational excellence ensures accountability, the following are some of the operational achievements from 2010 – 2011:

- The Building Code Commission achieved compliance with the revised Agency Establishment and Accountability Directive by Treasury Board/Management Board of Cabinet's March 31, 2011 deadline.

- The Building Code Commission held two meetings of the full Commission, one in May 2010 and the second in November 2010.

- The Building Code Commission continued its practice of surveying clients and received an overall satisfaction rating of 97% from clients who had used the services of the Commission between April 1, 2010 and March 31, 2011.

D. FINANCIAL REPORT

Budget

The Building Code Commission has no financial budget of its own. All costs of operation are borne by the Ministry of Municipal Affairs and Housing.

Revenues

The Building Code Commission does not generate any revenue, as there is currently no authority under the *Building Code Act, 1992* to charge fees for applications to the Building Code Commission.

Remuneration of Members

As part-time appointees, Building Code Commission members receive remuneration in the form of a per diem as established by Treasury Board/Management Board of Cabinet. Commission members are also reimbursed for out-of-pocket expenses associated with attending Commission hearings in Toronto and elsewhere in the province, in accordance with Ministry of Municipal Affairs and Housing and Ontario Public Service guidelines. Costs and expenses associated with Building Code Commission activities, including operating costs and member per diems, form part of the overall budget for the Building and Development Branch of the Ministry of Municipal Affairs and Housing. The Building Code Commission's application rate and/or complexity of issues directly impact the Branch's budget in support of Commission activities.

Appendix 1

Building Code Commission Performance Measurement: *Performance Measures, Targets, Status and Commitments*

Building Code Commission: Performance Measurement				
Outcomes	**Measures**	**Targets**	**2010 - 2011 Status**	**2011 – 2012 Commitments**
Fairness (processes and procedures that are fair and are seen to be fair)	Parties* are satisfied that the process was implemented fairly and without bias	Not more than 10% of hearings should result in judicial review on an annual basis	No judicial reviews	Not more than 10% of hearings should result in judicial review on an annual basis
Timeliness -- Technical Construction Disputes (quick resolution of technical construction disputes)	a) Average number of days from application to hearing	a) Hearings held an average of 40 working days from receipt of application	a) Hearings held an average 42 working days from the date of application	a) Hearings to be held an average of 40 working days from application
	b) Average number of days from receipt of Respondent's confirmation of dispute	b) Hearings held an average of 20 working days from receipt of Respondent's confirmation of dispute	b) Hearings held an average 23 working days from receipt of Respondent's confirmation of dispute	b) Hearings to be held an average of 20 working days from receipt of Respondent's confirmation of dispute
	c) Timely communication of decision	c) Communicate decisions to parties within 20 working days of completion of hearing for 75% of all hearings	c) Communicated decisions to parties within 20 working days of completion of hearing for 75% of all hearings	c) Communicate decisions to parties within 20 working days of completion of hearing for 75% of all hearings
	d) Timely posting of final written decisions on Building Code Commission internet site	d) Post 80% of final written decisions on the Building Code Commission internet site within 10 working days of completion	d) Final written decisions posted on the Building Code Commission internet site within 10 working days of completion for 85% of hearings	d) Post 85% of final written decisions on the Building Code Commission internet site within 10 working days of completion

Building Code Commission: Performance Measurement				
Outcomes	**Measures**	**Targets**	**2010 - 2011 Status**	**2011 – 2012 Commitments**
Timeliness – Municipal Service Level Disputes (quick resolution of disputes related to municipal service levels)	a) Timely acknowledgement and notification of hearing date.	a) Acknowledge receipt of complete submission and provide date for appeal hearing within 2 business days	a) Acknowledged receipt of complete submission and provided date for appeal hearing within 2 business days in 100% of the cases	a) Acknowledge receipt of complete submission and provide date for appeal hearing within 2 business days
	b) Timely scheduling of hearing date.	b) Hear appeals regarding the issuance of municipal building permits and inspection service levels within 5 business days of receiving the completed application	b) Heard appeals regarding the issuance of municipal building permits and inspection service levels within 5 business days of receiving the completed application in 100% of the cases	b) Hear appeals regarding the issuance of municipal building permits and inspection service levels within 5 business days of receiving the completed application
	c) Timely communication of decision.	c) Communicate decisions within 15 business days of receiving a complete application	c) Communicated decisions within 15 business days of receiving a complete application in 100% of the cases	c) Communicate decisions within 15 business days of receiving a complete application
Transparency (clear and understandable process and procedures)	Parties are satisfied that the BCC process and procedures were clearly understood	That 75% of the parties surveyed felt that the process and procedures were clear and understandable	2010/11 Survey results of BCC clients show that 100% of responding parties felt that the process and procedures were clear and understandable	That 80% of the parties surveyed felt that the process and procedures were clear and understandable
Expertise (sound decisions made due to technical competence of members)	a) Parties are satisfied that the BCC members demonstrated an appropriate level of knowledge and technical competency	a) That 80% of parties surveyed felt that the members were experts in the subject matter of the hearing	a) 2010/11 Survey results of BCC clients show that 93% of responding parties were satisfied that members were experts	a) That 85% of parties surveyed felt that the members were experts in the subject matter of the hearing
	b) Timely notice to the Minister's Office regarding upcoming BCC member vacancies	b) Provide two months notice to the Minister's Office in advance of member's appointments expiring	b) The Minister's office was provided with two months notice in advance of member appointments expiring in the in fiscal year 2010/11.	b) Provide two months notice to the Minister's Office in advance of member's appointments expiring

Building Code Commission: Performance Measurement				
Outcomes	**Measures**	**Targets**	**2010 - 2011 Status**	**2011 – 2012 Commitments**
Courtesy (polite and courteous treatment of all parties)	Parties are satisfied that they were treated with courtesy throughout the application process and at a hearing	That 75% of parties surveyed felt that they were treated with courtesy throughout the application process and the hearing	2010/11 Survey results indicate that 100% of clients felt that they were treated with courtesy by BCC staff throughout the application process and 100% felt that they were treated with courtesy by the BCC members at the hearing	That 85% of parties surveyed felt that they are treated with courtesy throughout the application process and the hearing

** In the above table "parties" means those parties recognized by the Building Code Act, 1992, namely BCC Applicants (i.e. applicants for building permits, holders of building permits or persons to whom an order has been issued) and Respondents (i.e. municipal enforcement officials and their designates).*

APPENDIX 2

MEMBERS OF THE BUILDING CODE COMMISSION

Commission Members	Original Appointment Date	Expiry Date of Current Appointment	Location
Tony Chow, Chair	February 27, 2002	April 30, 2012	Thornhill
Judith Beauchamp, Vice-Chair	July 5, 2004	February 3, 2012	Waterloo
Leslie Morgan, Vice-Chair	June 22, 2006	July 14, 2014	Mississauga
Prabhakar Mahant, Vice-Chair	January 15, 2007	February 3, 2012	Toronto
Gary Burtch	August 21, 2001	September 28, 2013	Haliburton
Neal Barkhurst	July 5, 2004	June 30, 2012	Toronto
Gerry Egberts	July 5, 2004	June 30, 2012	Willowdale
Susan Friedrich	July 5, 2004	June 30, 2012	Toronto
Yaman Uzumeri	July 5, 2004	June 30, 2012	Toronto
Rick Florio	September 17, 2004	June 30, 2012	Toronto
Edward Link	August 11, 2004	August 10, 2012	Windsor
James Wilkinson	August 25, 2004	August 24, 2012	Dundas
Douglas Clancey	May 30, 2006	July 14, 2014	Ottawa
Alison Orr	June 28, 2006	July 14, 2014	Dundas
Eric Gunnell	June 28, 2006	July 14, 2014	Toronto
Marina Huissoon	June 30, 2006	July 14, 2014	Milton
Mina Tesseris	June 30, 2006	July 14, 2014	Wasaga Beach